BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Alcoa Inc. District 9, Map 46, Control Map 46, Parcel 68P, Special Interest 001 Tax year 2001, 2002, 2003 District 9, Map 46, Control Map 46, Parcel 68P, Special Interest 002 Tax year 2003 District 11, Map 26, Control Map 26, Parcel 57P, Special Interest 002 Tax year 2001, 2002, 2003 District 11, Map 26, Control Map 26, Parcel 57P, Special Interest 004 Tax year 2001, 2002	)))))))))))))	Blount County

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

Account No. 046-068.00-P-001 (South Plant):

Tax Year	Appraisal	Assessment
2001	$127,567,538	$38,270,261
2002	$127,430,193	$38,229,058
2003	$ 75,848,531	$21,068,446

Account No. 026-057.00-P-002 (North Plant):

Tax Year	Appraisal	Assessment
2001	$163,909,093	$49,172,728
2002	$167,700,220	$50,310,066
2003	$137,192,502	$38,107,962

Account No. 046-068.00-P-002 (North Plant - PILOT Assets):

Tax Year	Appraisal	Assessment
2003	$ 60,352,977	$16,764,246

Account No. 026-057.00-P-004 (Leased Equipment):

Tax Year	Appraisal	Assessment
2001	$ 8,753,217	$ 2,625,965
2002	$ 9,659,443	$ 2,897,833

Appeals have been filed on behalf of the taxpayer with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on January 26th and 27th, 2006, in Knoxville. The appellant, Alcoa Inc. ("Alcoa"), was represented by Wayne R. Kramer, Esq., of Kramer, Rayson, Leake, Rodgers & Morgan, LLP (Knoxville). Doyle R. Monday, Esq. appeared on behalf of Blount County Assessor of Property ("Assessor") Mike Morton.

Prior to the hearing, the parties had entered into a 13-page "Stipulation of Facts and Issues of Law." A copy of that document is appended to, and incorporated by reference in, this initial order.

Findings of Fact and Conclusions of Law

Background. Though exceptionally well presented and defended, these appeals revealed some misconceptions on the part of both parties concerning the assessment of personal property in this state – particularly with respect to back assessments and reassessments.

The tangible personal property in question is located in Alcoa's sprawling manufacturing facility in the city of Alcoa. In each of the tax years under appeal, with the consent of the Assessor's office, Alcoa filed the tangible personal property schedules required by Tenn. Code Ann. section 67-5-903(b) *after* the March 1 deadline.[1] *See* Exhibit 48. Despite the voluminous items used (or held for use) in its business, the taxpayer submitted no fixed asset listing or other supporting documentation with these schedules. Exhibit 3.

On March 7, 2002, the Assessor notified Alcoa that its personal property accounts had been selected for audit.[2] Exhibit 45. This audit was conducted by Tax Management Associates, Inc. (TMA), a firm under contract with the county pursuant to Tenn. Code Ann. section 67-5-507. In a letter of September 5, 2002, TMA auditor Jeff Elam informed the Assessor that the firm had "finalized" its audit on Alcoa. Exhibit 54. The Assessor relayed the audit findings to Alcoa's senior property tax administrator Deborah Dillinger in a substantially identical letter dated September 13, 2002. On page 2 of his letter, Mr. Morton purported to "**make** the following back assessments in accordance with Tennessee Code Annotated 67-1-1007." [Emphasis added.] But the Assessor's letter concluded as follows:

> We have completed amended schedules based on the review findings. Please examine them, and if you are in agreement, sign the schedules and return them to our office. If you do not agree, we must receive written exception within thirty (30) days from the date of this letter, or we will have to **begin** back assessment procedures. [Emphasis added.]

Exhibit 42.

Ms. Dillinger took written exception to the audit findings in early October, 2002. After a series of face-to-face meetings and private consultations, the Assessor reaffirmed those findings in a letter to her dated March 19, 2003. Accordingly, Mr. Morton's letter continued:

> [W]e must proceed to place the additional assessment amounts on the certified tax rolls for the years 2001 and 2002.

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[1]Nowhere does the law appear to authorize an assessor to grant an extension of this statutory filing deadline.

[2]*See* State Board Rule 0600-5-.05. This audit did not encompass Account No. 046-068.00-P-002, which covers assets conveyed by Alcoa to the Industrial Development Board of Blount County under a payment-in-lieu-of-tax (PILOT) agreement dated December 31, 2002. Exhibit 38.

> If (Alcoa) remains in disagreement with the audit findings you have sixty (60) days from the date of **this correspondence** to file appeal forms with the State Board of Equalization. [Emphasis added.]

Exhibit 46.

On April 11, 2003, the Assessor mailed copies of certifications of back assessment/reassessment on Account Nos. 046-068.00-P-001, 026-057.00-P-002, and 026-057.00-P-004 for tax years 2001 and 2002 to Alcoa. Imprinted on each certification was the following information:

> Any person aggrieved by a back assessment or reassessment may appeal directly to the State Board of Equalization by filing an appeal with the Board within sixty (60) days from the date of **this certification**. [Emphasis added.]

Exhibit 41.

Alcoa's appeals from the above back assessments/reassessments were received by the State Board on June 9, 2003. After unsuccessfully contesting the Assessor's 2003 valuations of Account Nos. 046-068.00-P-001, 046-068.00-P-002, and 026-057.00-P-002 before the Blount County Board of Equalization, Alcoa perfected appeals for that tax year as well.

Analysis. The administrative judge will address the procedural and substantive issues raised by these appeals in the order recited in the aforementioned Stipulation.

1. Back Assessment/Reassessment Authority. Alcoa contends that, because the industrial vehicles depicted in Exhibits 1—29 were included on its tangible personal property schedules and duly assessed as reported (in GROUP 9), such property was thereby immune from a back assessment or reassessment. The administrative judge emphatically rejects this notion. As defined in Tenn. Code Ann. section 67-1-1001(a)(2):

> "Reassessment" means the assessment of property which has been assessed at less than its actual cash value by reason of connivance, fraud, deception, misrepresentation, **misstatement**, or omission of the property owner or the owner's agent. [Emphasis added.]

The purpose of an audit is not only to discover unreported property, but also "to determine if the taxpayer has reported properly." State Board Rule 0600-5-.05(2). Surely such a determination would entail review of the grouping of the assets listed on the schedule. After all, the standard rates of depreciation to be applied under Tenn. Code Ann. section 67-5-903(f) obviously depend on the grouping of those items.

Tenn. Code Ann. section 67-5-903(e) enables a taxpayer to amend a personal property schedule at any time until September 1 of the year following the tax year. Yet Alcoa would construe the law as giving the assessor less than three months (i.e., from the March 1 deadline

for filing the schedule until the May 20 deadline for completing the assessment roll) to verify once and for all the accuracy of the depreciation claimed by the taxpayer. This interpretation is especially repugnant where, as here, the taxpayer is a colossal enterprise that did not even return its personal property schedules on time.

Crossville Ceramics Co. (Dickson County, Tax Years 1995 & 1996, Initial Decision and Order, January 3, 1997), cited by Mr. Kramer in his Pre-hearing Brief (p. 21), is inapposite here. At issue in that case was whether alleged errors in the assessment of a manufacturing plant were correctable under the terms of Tenn. Code Ann. section 67-5-509.

2. Validity of Back Assessments/Reassessments.

Tax Year 2001. Except in the event of fraud, collusion, or failure to file the required reporting schedule, a back assessment or reassessment of personal property must be initiated by September 1 of the year following the tax year in which the original assessment was made. Tenn. Code Ann. section 67-1-1005(a). However, in 2000, the General Assembly amended section 67-1-1005 by adding the following subsection:

> (d) Notwithstanding the deadline in this section for initiating a back assessment or reassessment, the issuance of a notice of tangible personal property audit by the assessor tolls the running of the deadline during the period of the audit **from the issuance of the notice until issuance of the audit findings**. [Emphasis added.]

Public Acts 2000, ch. 934, section 1.

When the Assessor apprised Alcoa of the forthcoming audit on March 7, 2002, the statutory back assessment/reassessment deadline for tax year 2001 (September 1, 2002) was less than six months away. The audit findings were issued by Mr. Morton on September 13, 2002. Yet it was not until April 11, 2003 – some seven months later – that the Assessor certified the back assessments/reassessments under appeal to the city of Alcoa and Blount County Trustee. To its credit, the Assessor's office was attempting in good faith to resolve the dispute informally. Nevertheless, the administrative judge is compelled by the express provisions of Tenn. Code Ann. section 67-1-1005(d) to conclude that the back assessments/reassessments of the subject property for tax year 2001 were untimely. The "tolling" of a statute of limitations does not mean that it is suspended indefinitely. Rather, section 67-1-1005(d) merely stops the "clock" from running for the duration of the audit.

Tax Year 2002. Under the law in effect in 2001 and 2002, only the Shelby County Assessor of Property was authorized to **make** a back assessment or reassessment of property. *See* former Tenn. Code Ann. section 67-1-1005(d). In all other parts of the state, the assessor was obliged to refer a "sworn written complaint" for back assessment/assessment to

the **county board of equalization** for its consideration and decision. *See* former Tenn. Code Ann. section 67-1-1005(b). No such complaint against Alcoa was transmitted to the Blount County Board of Equalization in connection with tax years 2001 and 2002. Hence, relying primarily on *Aluminum Co. of America v. Celauro*, 762 S.W.2d 107 (Tenn. 1988), Alcoa argues that the purported back assessments/reassessments for both tax years were fatally defective.

Respectfully, the administrative judge disagrees. Effective January 1, 2003, the legislature rewrote Tenn. Code Ann. section 67-1-1005(b) (in relevant part) as follows:

> A back assessment or reassessment may be initiated by certification of the assessor of property to the appropriate collecting officials identifying the property and stating the basis of the back assessment or reassessment and the tax years and amount of any additional assessment for which the owner or taxpayer is responsible. The assessor shall send a copy of the certification to the owner or taxpayer. The collecting official shall thereupon send a notice of taxes due based on the back assessment and reassessment. Any person aggrieved by a back assessment or reassessment may appeal directly to the state board of equalization within sixty (60) days from the date that a copy of the certification is sent to the taxpayer, in the manner provided in section 67-5-1412…

Public Acts 2002, ch. 752, section 2.

The Assessor fully complied with these new procedures – albeit too late for tax year 2001. Contrary to Alcoa's insistence, nothing in the quoted act (including its effective date clause) suggests that the General Assembly intended to preserve the old back assessment/reassessment procedures beyond January 1, 2003 – regardless of the tax year(s) involved. Nor was there any compelling reason for the legislature to have done so. In no way does Tenn. Code Ann. section 67-1-1005(b) (as amended) revive, extend, or expand a taxpayer's liability for a back assessment or reassessment; for all practical purposes, the amendment simply removed county boards of equalization from the "loop" in the back assessment/reassessment process.[3] By contrast, the 1986 sales tax refund statute under which Alcoa sought to proceed in the *Celauro* case "made sweeping changes in prior law and significantly expanded remedies available to a taxpayer." 762 S.W.2d 107 at 109. The 1986 statute, the Tennessee Supreme Court held, "was not intended to reopen claims for taxes not paid under protest in earlier years." *Ibid*.

3. Classification of Industrial Vehicles. There is some irony in Alcoa's exception to the placement of the industrial vehicles in question (Exhibits 1—29) in GROUP 5 (Manufacturing Machinery) or GROUP 1. In *Metropolitan Government of Nashville & Davidson County and*

[3]Consideration of back assessment/reassessment complaints under former Tenn. Code Ann. section 67-1-1005(b) was complicated by the fact that county boards of equalization, whose regular sessions typically do not exceed 30 days, often had to be called into special session.

Williamson County, Tennessee (Final Decision and Order, February 10, 2000), at the instigation of centrally-assessed public utility companies alleging discriminatory assessment, the State Board convened a declaratory proceeding as to whether the tangible personal property depreciation tables in Tenn. Code Ann. section 67-5-903 tend to undervalue locally-assessed manufacturing machinery and equipment. Affirming the conclusions of its specially-appointed administrative judge, the agency held that the statute "undervalues locally assessed commercial and industrial tangible personal property by a factor of 11.6% for property in reportable Group 1 and by 16.6% in reportable Group 5." *Id*. at p. 7.

Of course, this general pronouncement does not foreclose Alcoa's specific complaints of overvaluation of items assessed as GROUP 1 or GROUP 5 property. In a purely generic sense, the items in question here are "vehicles" in that they are mechanical devices for transportation of personnel, goods, and equipment. Further, as Mr. Kramer stressed, the "Instructions for Completing the Tangible Personal Property Schedule" prepared by the State Division of Property Assessments (Exhibit 43) do not have the force and effect of law; nor do they purport to catalog **all** types of items which may be reportable under each group.[4]

That said, the State Board is not obliged to accept the broadest possible conception of an undefined term such as *vehicle* for property tax purposes. For example, although an airplane is a kind of vehicle, it clearly belongs in GROUP 4 (Aircraft, Boats and Towers) under Tenn. Code Ann. Code section 67-5-903(f). Likewise, the fact that the items in question may be considered vehicles in a different legal context (e.g., sales taxes; torts) is not determinative.

At the hearing, Mr. Kramer dismissed as irrelevant: (1) the repeated references to "equipment" in the sample master leases (Exhibit 31); and (2) the seven-year **accelerated** (MACRS) depreciation permitted by the Internal Revenue Service (IRS) for the equipment covered by those leases. *See* Exhibit 31. Yet such factors are certainly no less probative of the appropriate classification and valuation of these industrial vehicles than the average term of the leases (about 3.75 years). Tellingly, Alcoa introduced no evidence which would indicate that the economic life of this equipment is closer to five years (GROUP 9) than eight years (GROUP 5 or GROUP 1). Particularly in the absence of such proof, the administrative judge is not persuaded that these items – none of which is ordinarily used over the road – were wrongfully reassessed.[5]

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[4]Relative to GROUP 9, these instructions read as follows:

> Include all automobiles, buses, tractors, trucks, and other vehicles designed for over-the-road use. If a vehicle carries commercial tags it should be listed. If it is registered to a business or an individual operating as a business, whether or not the vehicle carries commercial tags, the vehicle should be listed. (Truck trailers are listed in Group 1.)

[5]Since the standard rates of depreciation for GROUP 1 and GROUP 5 property are the same, it is unnecessary to decide whether the industrial vehicles in question would be more accurately listed in one or the other group.

4. Depreciation of South Plant Assets. In a quirky twist, Alcoa alleges that the back assessments/reassessments on Account No. 046-068.00-P-001 were inflated as a result of inaccurate information provided **by the company** in the course of the audit. More specifically, Alcoa claims that it mistakenly informed the auditor as to the year of acquisition of certain items which were **correctly** reported as much older equipment on the taxpayer's original 2001 and 2002 personal property schedules. Consequently, the appellant asserts, those items have been overvalued. Alcoa requests that the record be held open for the receipt of additional proof on this issue (if it cannot be resolved informally). Mr. Monday objects on the ground that the taxpayer "should not be allowed another bite at the apple."

That the appellant has put itself in this predicament is, to say the least, regrettable. Had Alcoa furnished the back-up data that one might reasonably have expected to accompany personal property renditions of this magnitude, the problem would not likely have arisen. Nonetheless, the administrative judge knows of no statute or rule which would preclude the taxpayer from introducing the contemplated evidence in this proceeding – however cumbersome or dubious it may be. Alcoa, it should be emphasized, is not seeking to **amend** its personal property returns. Long ago, the State Board proclaimed that:

> …[A] primary objective of proceedings before the Board at any level, is the proper value of the property for property tax purposes. The Board is aware of no provisions of law limiting the evidence to be considered at any stage of proceedings before it, or otherwise limiting the Board in pursuing the proper assessment of property before it.

H. G. Hill Realty (Williamson County, Tax Year 1987, Notice of Default and Order of Remand, June 28, 1989), pp. 1—2.

The administrative judge also cannot ignore the recent enactment of Tenn. Code Ann. section 67-5-902(b), which provides that:

> If a taxpayer would be liable for additional tax due to back assessment of property omitted from a reporting schedule, or due to reassessment of property included in the schedule, the taxpayer may offset this liability by showing that other property listed on the schedule was over reported, or by providing information that the reassessed property or other property listed on the schedule should be valued using a nonstandard method that more closely approximates fair market value.

Public Acts 2005, ch. 201, section 1.

Presumably, if a taxpayer may disavow information previously reported on the schedule in a back assessment/reassessment proceeding, a taxpayer may also correct any misstatements made during the audit which led to the back assessment or reassessment.

5. Assessment of Raw Materials. Essentially, in its "Tennessee Operations," Alcoa makes aluminum sheet for beverage cans by extracting and refining alumina from bauxite mined **overseas**. Exhibits 51—53. There is no doubt that the components used in this process (alumina; coke; pitch; fluoride; scrap metal; potlining; and alloying metals) are "raw materials" as defined in State Board Rule 0600-5-.01(8); i.e., "items of tangible personal property, crude or processed, which are held or maintained by a manufacturer for use through refining, combining, or any other process in the production or fabrication of another item or product." Yet Alcoa has apparently not reported **any** raw materials on its personal property schedules. It is the company's position that all of these materials are exempt from taxation under the Tennessee Constitution as "the direct product of the soil in the hands of the producer, and his immediate vendee" (Article II, section 28) and/or an "article manufactured of the produce of this state" (Article II, section 30). The General Assembly has recognized these exemptions as follows:

> All growing crops of whatever kind, including, but not limited to, timber, nursery stock, shrubs, flowers, and ornamental trees, the direct product of the soil **of this state or any other state of the union**, in the hands of the producer or the producer's immediate vendee, and articles manufactured from the produce **of this state, or any other state of the union**, in the hands of the manufacturer, shall be exempt from taxation. [Emphasis added.]

Tenn. Code Ann. section 67-5-216(a).

While conceding that this statute must be strictly construed against the taxpayer, Alcoa maintains that the highlighted language cannot be deemed to limit the constitutionally-mandated exemptions to **domestic** products. In the appellant's view, such an interpretation would contravene the Import-Export Clause (Article I, Section 10[2]) of the United States Constitution, providing that:

> No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be made for the use of the treasury of the United States; and such laws shall be subject to the revision and control of the congress.

Notwithstanding Alcoa's protestations to the contrary, the property tax exemptions acknowledged in Tenn. Code Ann. section 67-5-216(a) plainly do not extend to: (1) the direct products of **foreign** soil; or (2) articles manufactured from **foreign** produce. The administrative judge cannot effectively rewrite this exemption statute in Alcoa's favor just because of references to non-assessable "products of the soil" elsewhere in the Code or the State Board's rules.[6] Nor, as an administrative tribunal, is the State Board empowered to declare a statute unconstitutional on its face. *See Richardson v. Tennessee Board of Dentistry*, 913 S.W.2d 446

[6] *See* Tenn. Code Ann. section 67-5-502(d); State Board Rule 0600-5-.04(3)(b).

(Tenn. 1995).[7] It is exclusively within the province of the courts to decide whether section 67-5-216(a) is unlawfully discriminatory.

Thus even assuming (without deciding) that the raw materials in question are either "direct products of the soil…in the hands of the producer or the producer's immediate vendee" or "articles manufactured from…produce…in the hands of the manufacturer" within the meaning of Tenn. Code Ann. section 67-5-216(a), the administrative judge cannot accept Alcoa's claim of exemption for these unreported items.

Order

It is, therefore, ORDERED that the back assessments/reassessments on Account Nos. 046-068.00-P-001, 026-057.00-P-002, and 026-057.00-P-004 for tax year 2001 be dismissed. The current assessments on the subject accounts are otherwise affirmed; provided, however, that upon Alcoa's timely filing of a petition for reconsideration pursuant to Tenn. Code Ann. section 4-5-317, the administrative judge will enter an order setting this matter for further proceedings relative to Issue No. 4 above.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

[7]Even if the State Board could consider the constitutionality of Tenn. Code Ann. section 67-5-216(a), it is doubtful that the levy of a property tax on these raw materials in their existing state at Alcoa's plant would be considered a prohibited "duty" or "impost" on imports or exports. *See Michelin Tire Corporation v. Wages*, 423 U.S. 276, 96 S.Ct. 535 (1976).

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of February, 2006.

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Wayne R. Kramer, Esq., Kramer, Rayson, Leake, Rodgers & Morgan, LLP
Doyle R. Monday, Esq., Counsel for Blount County Assessor of Property
Mike Morton, Blount County Assessor of Property

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